



# UNITED STATES PATENT AND TRADEMARK OFFICE

A

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,455	11/06/2003	Eric B. Stenzel	12013/48301	8547

23838 7590 03/31/2005

KENYON & KENYON  
1500 K STREET, N.W., SUITE 700  
WASHINGTON, DC 20005

EXAMINER
----------

GHERBI, SUZETTE JAIME J

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 03/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SN

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/701,455	STENZEL, ERIC B.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Suzette J Gherbi	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/30/04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 7-10, 12-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Stoll 6,849,089. Stoll discloses the invention as claimed noting figures 6 and 7 comprising: A medical structure (2) and at least one therapeutic composition deposited on the structure (2) for controlled delivery of at least one therapeutic composition wherein the structure includes a first site (*the first site can be interpreted as the first microspore*) with the composition deposited thereon and a second site (*the second site is interpreted as the 2<sup>nd</sup> microspore adjacent the 1<sup>st</sup> see figure 7*) with the composition deposited thereon; the therapeutic composition at the first site is covered with a first protective layer (5''') and the therapeutic composition at the second site is covered with a second protective layer (5'' see big then small spears); the first protective layer having a faster in vivo decomposition rate relative the second protective layer to release the composition from the first site faster than the therapeutic composition at the second site

(see col. 13, lines 15-33 which state that the release rates can be modified).; wherein the microspore equates to a pellet; an adhesive interposed between the first coated pellet and the structure (see col. 12, lines 66-67, col. 13, lines 1-5);

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-6, 11, 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stoll in view of Bennett et al. 6,339,130. Stoll has been disclosed above however Stoll's adhesive is not described. Bennett et al. teaches that adhesives for use with prosthetic devices are well known and polymers are known adhesive with curing properties (see abstract and col. 3, lines 12-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the adhesive of Stoll with the claimed properties such as polymers because Bennett et al. teaches that they can be used with a variety of surgical devices. Stoll also does not specify that a plurality of sublayers on the micro-spheres. It would have been obvious to one having ordinary skill in the art at the time the invention was made to add a plurality of sublayers because Stoll does note that a plurality of layers are contemplated (see figure 5) in order to vary the degradation and release rate of the therapeutic compositions.


**Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Peterson et al. 6,299,905 ; Diaz 2004/0127976 ; and Shanley et al. show related material.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

8. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Suzette J-J Gherbi  
29 March 2005